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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/169888

PRELIMINARY RECITALS

Pursuant to a petition filed November 03, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on December 21, 2015, at Ellsworth, Wisconsin.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for physical therapy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Pierce County.

2. On September 9, 2015, the petitioner with [REDACTED] requested either 52 or 69 physical therapy sessions over a six-month period, beginning September 16, 2015. (The request is for two sessions per week for 26 weeks, which equals 52 sessions, but the total number of sessions requested is 69.) On October 20, 2015, the Office of Inspector General modified the request, approving one session per week for 26 weeks.
3. The petitioner was born in March 2013.
4. The petitioner was involved in a car accident on May 23, 2014. She suffered a fractured skull with traumatic brain injury. She spent 77 days in the hospital, including a couple weeks when she was intubated. She had a G-tube until February 2015. After the accident, she could no longer sit independently or roll.
5. Before her accident, the petitioner could use both of her arms for playing, feeding herself, crawling, and doing age-appropriate transitions such as moving from crawling to sitting, rolling, and kneeling.
6. The petitioner will receive services from the Birth-to-Three program until her next birthday. Birth-to-Three provides 14 one-hour physical therapy visits over six months. These are joint visits with the speech therapist. The person providing those physical therapy services is the same person who provides services for [REDACTED].
7. [REDACTED] listed the following basic problems that its therapy would address: postural control, coordination, quality of movement, core stability, and muscle tone.
8. [REDACTED] set the following goals for the petitioner:
 - a. Will improve muscle strength and range of motion to allow her to interact with her environment through age appropriate play activities and mobility.
 - i. [She] will play with objects with her left hand 50% of the time when presented with the opportunity to improve interaction with her environment and improved bilateral coordination.
 - ii. [She] will be able to stand independently for 2 minutes for improved postural control and mobility.
 - iii. [She] will be able to consistently transition supine to sit over her left side independently for improved mobility and strength.
 - iv. [She] will cruise along furniture for at least 10 steps to the left or the right.
 - v. [She] will pull to stand on a consistent basis.
9. [REDACTED]'s proposed plan of care includes the following: therapeutic exercises (including exercises to develop range of motion, strength, coordination, and posture); improve balance, coordination, and kinesthetic awareness; and aquatic therapy (includes therapeutic exercise).

DISCUSSION

The petitioner, with [REDACTED], Inc., requested either 52 or 69 physical therapy sessions over a six-month period beginning September 16, 2015. (The request is for two sessions per week for 26 weeks, but the total amount of sessions requested is 69.) The Office of Inspector General modified the request, approving one session per week. Medical assistance covers physical therapy if the recipient obtains prior authorization after the first 35 visits. Wis. Admin. Code § HFS 107.16(2)(b). In determining whether to approve therapy, the Division must consider the generic prior authorization review criteria listed at Wis. Admin. Code § HFS 107.02(3)(e). They include:

1. The medical necessity of the service;

2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;

Medically necessary” means a medical assistance service under ch. HFS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The petitioner will turn three in March. In May 2014, she was in a car accident that left her with severe injuries, including a fractured skull and traumatic brain injury. She was intubated for over a month and hospitalized for 77 days. When she left the hospital she could no longer move about independently. She has received both Birth-to-Three and private therapy services most of time since then. The Office of Inspector General approved one of the two days a week she requested after determining that [REDACTED] failed to objectively measure the petitioner’s deficits, failed to demonstrate why a trained therapist was needed to provide the therapy, and failed to justify two days of services each week in addition to those she already received from the Birth-to-Three program.

I understand the Office of Inspector General’s misgivings about approving a request that lacks objective measurements. The primary goal of [REDACTED]’s proposed therapy is to improve the petitioner’s “muscle strength and range of motion to allow her to interact with her environment through age appropriate play activities and mobility.” Yet their request does not include any objective measurement of her strength or range of motion. Still, in this particular case, given the nature of her accident and injuries, the information [REDACTED] included about her ability is sufficient to determine whether she needs care. It indicated that she could take 30 steps with little assistance, that her steps tended to be short, that she uses her left hand more than her right, and that she is beginning to manipulate a cup. These are basic skills for someone approaching three, and I assume that there is some type of basic therapy used to treat these problems in one who suffered a head injury; I also assume that this therapy does not change significantly if the recipient’s motion varies by several degrees,

But what is lacking in the prior authorization request—and is needed to review whether the therapy is necessary—is evidence that the services of a trained physical therapist are needed two days a week in addition to the therapy the petitioner already receives from the Birth-to-Three program. I do not expect

that a parent can set up a program to help a child who has suffered brain damage and other severe injuries or to adjust the program when progress is made. But successful physical therapy depends upon daily repetition. It is not enough that the petitioner perform the various tasks once, twice, or even three times a week, which means that she must do them when she is at home. The question is, how much guidance is needed for this to occur?

██████'s request provides little information on the exercises it has the petitioner perform, so it is not possible to determine how much their performance depends upon supervision from a therapist. Its entire plan of care includes the following: therapeutic exercises (including exercises to develop range of motion, strength, coordination, and posture); improve balance, coordination, and kinesthetic awareness; and aquatic therapy (includes therapeutic exercise). The petitioner and ██████ have the burden of proving that the requested therapy is necessary. While I have no doubt that the petitioner requires a trained therapist, there is not enough proof that she is needed any more often than the Office of Inspector General has approved. Therefore, I will uphold its decision.

I note that when the Birth-to-Three services end, the petitioner's circumstances will change. Whether this will entitle her to additional services will depend upon the evidence submitted in her next prior authorization request.

CONCLUSIONS OF LAW

The petitioner has not shown by the preponderance of the credible evidence that she requires more than one session of physical therapy per week from ██████, Inc.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

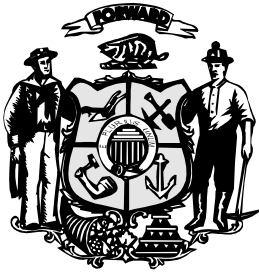
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 25th day of January, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 25, 2016.

Division of Health Care Access and Accountability